

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

FRED SMITH,

Plaintiff,

VS.

JUSTIN JONES, et al.,

Defendants.

CIV-12-1365-HE

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. §1983 on December 10, 2012. The matter was referred to the undersigned Magistrate Judge by United States District Judge Heaton on December 11, 2012, for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). On December 13, 2012, the undersigned reviewed the pleadings filed by Plaintiff and entered an Order notifying Plaintiff that the documents filed on December 10, 2012, were deficient because the motion to proceed *in forma pauperis* was not on proper form, the motion that had been submitted was missing the financial information and/or signature of an authorized officer of the penal institution and missing a certified copy of the statement(s) of Plaintiff's institutional account(s) for the six-month period immediately preceding this filing. The Plaintiff was ordered to cure this deficiency by January 3, 2013, and advised that if the deficiency was not cured, the undersigned would recommend the dismissal of the action without prejudice. On December 27, 2012, Plaintiff

filed a pleading entitled “Motion For Order to Release Plaintiff’s Funds to Pay For Service” and on January 2, 2013, Plaintiff filed a pleading entitled “Motion for Special Report.” Neither of these pleadings includes the financial information or certified copy of Plaintiff’s institutional account as required by 28 U.S.C. §1915. As of this date, Plaintiff has failed to comply with the Order entered on December 13, 2012. Nor has Plaintiff sought an extension of time to do so.

Plaintiff's lack of interest in complying with the Court's Order combined with the Court's attempt to manage and control its caseload warrant a dismissal of the Complaint without prejudice. See Gripe v. City of Enid, Okla., 312 F.3d 1184, 1188 (10th Cir. 2002) (Federal Rules of Civil Procedure authorize sanctions, including dismissal, for failure to comply with court’s orders). See also Nasious v. Two Unknown B.I.C.E Agents at Arapahoe County Justice Center, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007)(*sua sponte* dismissal for failure to comply with court’s orders permitted under federal rules, and court need not follow any particular procedures in dismissing action without prejudice for failure to comply).

RECOMMENDATION

In view of the foregoing, the undersigned recommends that the action be dismissed without prejudice. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by January 28th, 2013, in accordance with 28 U.S.C. § 636 and LCvR 72.1. The failure to timely object to this Report and

Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 7th day of January, 2013.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE